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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,543	06/26/2003	Peter Arbor	2299.008	5245
4617	7590	08/10/2005	EXAMINER	
LEVISOHN, BERGER & LANGSAM, LLP 805 THIRD AVENUE, 19TH FLOOR NEW YORK, NY 10022			LHYMN, EUGENE	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/606,543

Applicant(s)

ARBOR ET AL.

Examiner

Eugene Lhymn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 10 and 16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. Claim 10 calls for a locking mechanism being unlockable from the interior volume without use of a key. Claim 16 calls for a hingedly attached sidewall automatically locking upon manual closure. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 3, 7, 8, 9, 13, 14, and 17 rejected under 35 U.S.C. 102(b) as being anticipated by Kay et al. (US 3793756). With respect to claim 1, Kay et al. discloses a combination litter container and display device comprising the following:

a base having ground contacting securing means for locating the kiosk on the ground, which is shown in Fig. 1, with equivalent means under 35 U.S.C. 112 paragraph 6, for locating the kiosk on the ground (Fig. 4, item 70) wherein item 70 could easily be secured to the ground and serve as a securing means;

walls attached to and rising up from said base (Fig. 1, item 52), said walls and said base defining an interior volume and including substantial, light transmissible portions formed in at least one of said walls (Col. 2, Lines 28-29);

an opening substantially secured to said walls, as shown in Fig. 1, above said base, allowing limited access to place trash into said interior volume (Fig. 1, item 46), wherein said interior volume is visible through said light transmissible portion from outside said kiosk (Col. 2, Lines 28-29).

With respect to claim 2, Kay et al. discloses a combination litter container and display device comprising the following:

an image holding means into which an image is disposable (Fig. 1, item 52; Col. 5, Lines 46-51);

a planar window, as evident in Fig. 1 wherein the windows are clearly planar, wherein when an image is disposed in said image holding means, the image is viewable through said window (Col. 2, Lines 28-29).

With respect to claim 3, Kay et al. discloses a combination litter container and display device wherein the display frame includes a hinged portion moveable between an open (able to insert display item) and closed position (unable to insert display item) (Col. 2, Lines 18-25).

With respect to claim 7, Kay et al. discloses a combination litter container and display device wherein the light transmissible portions are formed from glass, plexiglass, or plastic (Col. 2, Lines 28-29).

With respect to claim 8, Kay et al. discloses a combination litter container and display device wherein at least one sidewall is hingedly attached to an adjacent wall and is openable to provide lateral access to the interior volume wherein Fig. 2 show sidewall, item 52, being hingedly attached to an adjacent wall and openable.

With respect to claim 9, Kay et al. discloses a combination litter container and display device wherein at least one hingedly attached wall includes a locking mechanism external to the kiosk unlockable by use of a key (Fig. 1, item 120).

With respect to claim 13, Kay et al. discloses a combination litter container and display device wherein the base comprises an upper base portion to which the sidewalls are attached and a lower base portion fixed to the upper base portion, as shown in Fig. 1, the base having at least two individually adjustable legs, as is evident in Fig. 5 wherein the bolt structure on the lower base portion is adjustable.

With respect to claim 14, Kay et al. discloses a combination litter container and display device wherein the legs are threadedly attached to nuts fixed to the lower base portion (Fig. 4, item 70). It should be noted that although a nut(s) is not shown, it is well-known in the art to include a nut in a threaded connection so as to provide a tight fitting.

With respect to claim 17, Kay et al. discloses a combination litter container and display device having a shield at least partially covering the kiosk and limiting access to the internal volume (Fig. 1, item 46).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kay et al. in view of Ryan et al. (US 6089685). Kay et al. discloses the claimed invention except for the hinged portion being a small portion of the length of the display frame. However, Ryan et al. teaches a storage container wherein the hinge is not one continuous piece, as disclosed by Kay et al., but rather 3 discrete hinges, thereby forming a small portion of the length of the door. Having a smaller hinged portion reduces weight and material costs. Therefore, it would have been obvious to one of ordinary skill in the art to combine the litter container combination of Kay et al. with the hinged portion of Ryan et al. in order to reduce material costs and overall structure weight.

7. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kay et al. in view of Weiss (US 4069997). With respect to claim 5, Kay et al. discloses the claimed invention except for the walls comprising bars spaced apart, with light-

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transmissible portions being disposed between adjacent the bars. However, Weiss teaches a waste receptacle in which the sidewall is comprised of bars spaced apart, with light-transmissible portions being disposed between adjacent the bars (Fig. 1). Having spaced bars allows the contents of the container to be visible, which could provide a safety measure. Therefore, it would have been obvious to one of ordinary skill in the art to combine the litter container combination of Kay et al. with the barred sidewall configuration of Weiss so as to provide a safety measure wherein the contents of the receptacle are visible.

With respect to claim 6, Kay et al. discloses the claimed invention except for the light-transmissible portions comprising air gaps in the sidewalls. However, Weiss teaches a waste receptacle in which the light-transmissible portion comprises air gaps in the sidewalls, inherently formed by the barred configuration of the sidewall (Fig. 1). Having the contents of the container visible provides a safety measure, wherein if a dangerous object is placed inside, it would be quickly identified. Therefore, it would have been obvious to one of ordinary skill in the art to combine the litter container combination of Kay et al. with the barred sidewall configuration of Weiss so as to provide a safety measure wherein the contents of the receptacle are visible.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kay et al. in view of Sterner (US 3412586). Kay et al. discloses the claimed invention for a locking mechanism being unlockable from the interior volume without use of a key. However, Sterner teaches a safety lock for cold room applications wherein in the event

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that one is trapped inside an externally locked cold room, one could unlock the door from the inside (Col. 1, Lines 14-23), thereby providing an inherent safety benefit.

Therefore, it would have been obvious to one of ordinary skill in the art to combine the litter container combination of Kay et al. with the safety locking mechanism of Sterner so as to provide a safety measure in the event that someone would get trapped inside the receptacle.

9. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kay et al. in view of Sianos (US 6341438 B1). Kay et al. discloses the claimed invention except for the base being boltable to the ground. However, Sianos teaches a display device that could be used as a waste receptacle in which the base is boltable to the ground (Col. 3, Lines 24-27). Bolting the base to the ground prevents any unwanted movement of the receptacle. Therefore, it would have been obvious to one of ordinary skill in the art to combine the litter container combination of Kay et al. with the boltable base of Sianos so as to prevent any unwanted movement of the receptacle.

10. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kay et al. in view of Safford (US 3510055). Kay et al. discloses the claimed invention except for a removable trash receptacle wherein trash is placed into the kiosk via the opening, the trash falls in. However Safford teaches a refuse container in which a removable container receives the placed trash through the upper opening (Fig. 1, item c). Having a removable inner container provides a more efficient trash-emptying process. Therefore,



it would have been obvious to one of ordinary skill in the art to combine the litter container combination of Kay et al. with the removable trash container of Safford so as to provide a more efficient trash-emptying process.

11. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kay et al. in view of Korshak (US 4096966). Kay et al. discloses the claimed invention except for a ballast being added to the base. However, Korshak teaches a self-righting structure in which an additional mass, or ballast, is added to the base of the structure, thereby increasing the mass of the structure and improving the overall balance of the structure. Therefore, it would have been obvious to one of ordinary skill in the art to combine the litter container combination of Kay et al. with the ballast addition of Korshak so as to improve the overall balance of the container.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lowe (US 5772061)

Groeger (US 2415587)

Walsh et al. (US 5862932)

Brown (US 5183175)

Viney (US 5865479)

Burleson et al. (US 3295124)

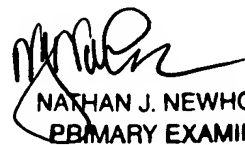
Lindholm et al. (US 3370787)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWT 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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NATHAN J. NEWHOUSE  
PRIMARY EXAMINER